

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

|                                   |   |             |
|-----------------------------------|---|-------------|
| IN THE MATTER OF THE APPLICATION  | ) |             |
| FOR BENEFICIAL WATER USE PERMIT   | ) | FINAL ORDER |
| NO. 30622 BY RALPH AND MARY KELLY | ) |             |

\* \* \* \* \*

Pursuant to the Montana Water Use Act, and the contested case provisions of the Montana Administrative Procedures Act, a hearing in the above-entitled matter was held in Phillipsburg, Montana.

FINDINGS OF FACT

The Applicants do not intend to take and use water.

CONCLUSIONS OF LAW

The Applicants do not intend to appropriate water. Such an intent is a prerequisite for a water use permit. See Toohey v. Campbell, 24 Mont. 13, 60 P.296 (1900); MCA 85-2-310(3).

This conclusion is bottomed on an admission of the Applicants. It is clear by the Applicants' statements that they do not intend to divert or use any greater quantity of water than that amount claimed pursuant to the adjudication process. It is equally clear that the Applicants are not abandoning their claim

**CASE # 30622**

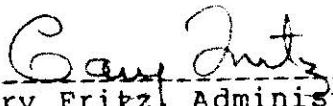
of an existing right. Thus, the permit sought herein is not based on an appropriative interest. The Applicants' claim for an existing appropriation must be tested in accord with the adjudication process.

WHEREFORE, Application for Beneficial Water Use Permit No. 30622 by Ralph and Mary Kelly is hereby denied and dismissed in its entirety.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DONE this \_\_\_\_ day of November, 1982.

  
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Gary Fritz, Administrator  
Department of Natural  
Resources and Conservation  
32 South Ewing, Helena, MT  
(406) 449-2872

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Matt Williams, Hearing Examiner  
Department of Natural Resources  
and Conservation  
32 South Ewing, Helena MT 59620  
(406) 449-2872

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AFFIDAVIT OF SERVICE  
Final Order

STATE OF MONTANA                    )  
  ) ss.  
County of Lewis & Clark )

Beverly J. Jones, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says That on November 19, 1982, she deposited in the United States mail, certified mail, return receipt requested mail, an order by the Department on the Application by Ralph and Mary Kelly, Application No. 30622, for a Permit to Appropriate water, addressed to each of the following persons or agencies:

1. Ralph and Mary Kelly, Box 426, Phillipsburg, MT 59858
2. David O. Kesler, Box 6, Philipsburg, MT 59858
3. Dave Pengelly, Missoula Area Office Supervisor, (inter-department mail)
4. Matt Williams, Hearing Examiner, DNRC, Helena (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION

by Beverly J. Jones

STATE OF MONTANA                    )  
  ) ss.  
County of Lewis & Clark )

On this 19th day of November, 1982, before me, a Notary Public in and for said state, personally appeared Beverly J. Jones, known to me to be the Hearing Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

James R. G. [Signature]  
Notary Public for the State of Montana  
Residing at Montana City, Montana  
My Commission expires ~~5/1/85~~

1/21/84

CERTIFIED NUMBERS 53070 and 53071

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